BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Boyle Cool Springs II, et al. Dist. 8, Map 53, Control Map 53, Parcels 143.00, 143.01, 143.02, 143.03 and 143,04 Commercial and Exempt Property Tax Year 2006	)) Williamson County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued in the aggregate at $11,296,000 as follows:

PARCEL	ACRES	VALUE ($)	ASSESSMENT ($)
143.00	3.94	1,457,800	583,120
143.01	3.67	1,358,900	543,560
143.02	11.48	2,975,400	1,190,160
143.03	6.8	2,014,200	Exempt
143.04	14.5	3,489,700	1,395,880

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 12, 2007 in Nashville, Tennessee. The taxpayer was represented by David C. Scruggs, Esq. The assessor of property, Dennis Anglin, represented himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of five parcels of vacant land located on Carothers Parkway in the Cool Springs section of Franklin, Tennessee. Subject parcels contain a total of 40.39 acres. As summarized above, subject parcels contain anywhere from 3.67 acres to 14.5 acres.

The taxpayer purchased all 40.39 acres as a whole on May 29, 2005 for $7,500,000. On August 26, 2005, the taxpayer entered into a contract with Civil Constructors, Inc. to do site improvements consisting of grading, utilities and paving for a total of $1,359,426. As of December 31, 2005, the contractor had been paid $484,143 for the work performed to date.

At some point prior to January 1, 2006, a plat had been recorded effectively subdividing the 40.39 acres into five distinct parcels. Although the parties and this opinion address all five parcels, the taxpayer technically withdrew its appeal of parcel 143.03 at the outset of the hearing because it is owned by the Williamson County Industrial Development Board and therefore exempt.

The taxpayer contended that the five parcels should be valued in the aggregate at $8,000,000. The taxpayer argued that subject property should be valued at the sale price of $7,500,000 plus the value of the completed site work as of December 31, 2005 (approximately $500,000) for a total value of $8,000,000.

In support of this position, the taxpayer relied primarily on the testimony of Jeff Haynes, the Chief Manager of Boyle Nashville, LLC. Mr. Haynes testified that he has twelve (12) years experience in real estate development and twenty-five (25) years experience in real estate generally. Mr. Haynes stated that in his opinion the mere filing of a plat does not create value. According to Mr. Haynes, value is not created until completion of the necessary infrastructure. Mr. Haynes noted that subject parcels have various topographical problems which must be addressed before any enhancement in value will be recognized in the market.

The taxpayer also asserted that the current appraisals of subject parcels should be reduced in order to maintain equalization. Essentially, the taxpayer introduced proof to show that the assessor has appraised several parcels in the immediate area at values significantly below their 2005 sales prices.

The assessor contended that subject parcels should remain valued as summarized above based upon nine (9) comparable sales. In support of this position, the assessor relied on the testimony and analysis of staff appraiser Richard Pollard. Mr. Pollard began working as a commercial real estate appraiser in 1971 and has worked for Mr. Anglin for approximately 8.5 years. Mr. Pollard is not presently licensed as a fee appraiser.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject acreage should be valued in the aggregate of $10,420,700.[1] As will be discussed below, the administrative judge finds that subject parcels should be appraised by deducting the cost of necessary site improvements ($1,359,426) from the assessor's current appraised values for each parcel.

Since the taxpayer is appealing from the determination of the Williamson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

[1] This results in the four parcels under appeal being appraised at the aggregate at $8,406,600 rather than at $9,281,800.

Respectfully, the administrative judge finds that the taxpayer's proposed valuation methodology must be rejected. The administrative judge finds that the taxpayer's purchase of the 40.39 acres on May 19, 2005 cannot provide a starting point for at least three reasons. First, even if it is assumed arguendo that the taxpayer's purchase was an arm's length transaction, one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

> Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that the sales introduced by the assessor indicate a significantly higher range of value for smaller tracts in the immediate area.[2] Second, the taxpayer did not introduce a highest and best use analysis despite the fact this seemingly constitutes the threshold issue from an appraisal standpoint. Third, and perhaps most importantly, the administrative judge finds that on the relevant assessment date of January 1, 2006, subject acreage had been effectively subdivided into five distinct parcels containing a minimum of 3.67 acres and a maximum of 14.5 acres.

The administrative judge finds that even without the necessary infrastructure in place, it must be concluded that if sold individually, the five parcels would have commanded more in the aggregate than a single 40.39 acre tract. Indeed on January 1, 2006, site improvements were already proceeding for the office building now located on parcel 143.03. The administrative judge finds it reasonable to assume that prospective buyers of the other four (4) parcels would have considered the ongoing development of parcel 143.03 beneficial to the value of the undeveloped parcels.

The administrative judge finds that the comparable sales summarized in Mr. Pollard's analysis (exhibit #4) should initially receive greatest weight. However, the administrative judge finds that they were not adjusted to account for the fact that necessary site work had been completed at the time of sale. The administrative judge finds that the assessor's estimate of value should be reduced by $1,359,426 which reflects the contract price for necessary site improvements (exhibit #1). Absent additional evidence from the taxpayer, the administrative judge finds it most reasonable to assume that the $484,143 paid as of December 31, 2005 went towards the development of parcel 143.03. Accordingly, the administrative judge finds that the assessor's current appraisals of parcels 143.00, 143.01,

[2] The administrative judge will discuss below the fact that those sales must be adjusted to reflect that necessary site improvements had been completed by the sales dates.

143.02 and 143.04 should be reduced by $875,283 which reflects the cost of the remaining site work. Given the lack of any parcel-by-parcel cost breakdown in the record, the administrative judge finds that the appraisal of each parcel should be reduced by $218,821 ($875,283 ÷ 4).

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the State Board of Equalization has historically adhered to a market value standard when setting values for property tax purposes. See *Appeals of Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to "equalization" of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.[3] The State Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. For example, in *Stella L. Swope* (Davidson County, Tax Years 1993 and 1994), the Assessment Appeals Commission rejected such an argument reasoning as follows:

> The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2.

The administrative judge finds the taxpayer's citation of the undersigned administrative judge's decision in *Jason Crews Partnership* (Shelby Co., Tax Year 2002) inapplicable. The administrative judge finds that the cited decision involved the issue of whether describing undeveloped land as a developed subdivision on the property record card constituted a correctable error under Tenn. Code Ann. § 67-5-509.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2006 and the taxpayer's appeal of parcel 053-143.03 be dismissed:

PARCEL	LAND VALUE ($)	IMPROVEMENT VALUE ($)	TOTAL VALUE ($)	ASSESSMENT ($)
053-143.00	1,239,000	0	1,239,000	495,600
053-143.01	1,140,100	0	1,140,100	456,040
053-143.02	2,756,600	0	2,756,600	1,102,640
053-143.04	3,270,900	0	3,270,900	1,308,360

[3] See Tenn. Code Ann. §§ 67-5-1604-1606. Usually, in a year of reappraisal – whose very purpose is to appraise all properties in the taxing jurisdiction at their fair market values – the appraisal ratio is 1.0000 (100%). That is the situation here.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 6th day of March, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: David C. Scruggs, Esq.
Dennis Anglin, Assessor of Property